

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Repeal Sections 27.20, 27.25, 27.30, 27.35, 27.40,
27.42, 27.45, 27.50, 27.51, and 630.5
and
Amend Sections 29.05, 29.40, 30.00, 120.7, 122, 123,
149, 165, 180, 630, 632, and 747
Title 14, California Code of Regulations
Re: Marine Protected Areas

- I. Date of Initial Statement of Reasons: September 20, 2004
- II. Date of Pre-adoption Statement of Reasons: October 29, 2004
- III. Date of Final Statement of Reasons: December 8, 2004
- IV. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: October 21, 2004
Location: Concord, California
- (b) Discussion Hearing: Date: December 3, 2004
Location: Monterey, California
- (c) Adoption Hearing: Date: December 3, 2004
Location: Monterey, California
- V. Update:

Several non-substantive changes have been made to the regulatory language provided in the Initial Statement of Reasons. These changes were made to correct typographical errors or provide clarity and consistency among the regulations and with the existing regulatory language and are provided in the following table:

Section	Summary of Proposed Modifications
632(b)	A reference to the geographic information used to determine latitude and longitude coordinates was added to this subsection.
632(b)(9) and	Additional information was added to the proposed language regarding

(43)(A)	Gerstle Cove State Marine Conservation Area and Harris Point (San Miguel Island) State Marine Reserve to clarify the seaward boundary lines.
632(b)(13)	Additional information was added to the proposed language regarding Tomales Bay State Marine Park to clarify that the area lies within an ecological reserve.
632(b)(13)(C) and (25)(D)	Language clarifying that take of waterfowl is not prohibited was added to the proposed regulations for Tomales Bay State Marine Park and Bair Island State Marine Park.
632(b)(43), (44), (45), (47), (48), (49), (50), and (51)	Location coordinates were re-organized in subsections regarding Harris Point (San Miguel Island) State Marine Reserve, Judith Rock (San Miguel Island) State Marine Reserve, Carrington Point (Santa Rosa Island) State Marine Reserve, South Point (Santa Rosa Island) State Marine Reserve, Painted Cave (Santa Cruz Island) State Marine Conservation Area, Gull Island (Santa Cruz Island) State Marine Reserve, Scorpion (Santa Cruz Island) State Marine Reserve, and Anacapa Island State Marine Conservation Area to standardize the presentation of the information. Descriptions begin with the up-coast shoreline corner followed by the offshore corners, in order from up-coast to down-coast, and end with the down-coast shoreline corner.
632(b)(57)(E) and (73)(C)	Language was added to the proposed regulations for Bolsa Chica State Marine Park, Orange County, and Buena Vista Lagoon State Marine Park, San Diego County, to specify that the respective counties may carry out specified management activities after consultation with the Department.
632(b)(73)(A)	Language was added to the proposed regulations for Buena Vista Lagoon State Marine Park to designate where and when recreational take may occur.
632(b)(77)	A typographical error in the list of latitude and longitude coordinates was corrected.

Non-substantive modification of the originally proposed language of the Initial Statement of Reasons was to improve clarity and consistency in the proposed language.

The proposed addition of the geographic information reference is to provide a standard source for exact determination of management lines. This will minimize confusion about the location of the coordinates and allow for accurate reproduction of the coordinates in various geographic information systems.

Additions of the proposed boundary line specifications will clarify how and where lines are to be drawn and will minimize confusion about the exact locations of these areas.

The addition of information to the proposed language regarding Tomales Bay State Marine Park will clarify that the boundary location of the state marine park is within an ecological reserve.

The proposed addition of language specifying that waterfowl can be taken in two state parks is the result of a review of the original language found in Section 630, Title 14, CCR. These existing provisions for the take of waterfowl were inadvertently omitted during the drafting of the proposed regulations. The additions make the proposed language consistent with the existing language.

The proposed language to re-organize coordinate information will provide consistency among the proposed regulations and make it easier to use that information.

Existing provisions for certain management activities by counties were inadvertently omitted during the drafting of the proposed regulations. The additions make the proposed language consistent with the existing language.

The proposed change to regulations regarding the Buena Vista Lagoon State Marine Park to designate areas and time of take will make this section more consistent with existing regulations.

The proposed change to the regulations regarding the Cardiff-San Elijo State Marine Conservation Area corrects a typographical error in the third offshore corner boundary coordinate.

Because Office of Administrative Law's ID # Z 03-1007-10, Z 03-1104-07, Z 04-0423-03, Z 04-0629-17 and Z 04-1005-10 also amends Section 149 (Commercial Taking of Market Squid), the regulatory text regarding Tidal Invertebrate Permits which was proposed in this rulemaking to be added to subsection (b) is instead added as subsection (k). Therefore, the previously noticed re-lettering of subsections (b) through (e) as (c) through (f) is no longer necessary. Section 149 subsections (b) through (J) are being amended and/or added by ID # Z 03-1007-10, Z 03-1104-07, Z 04-0423-03, Z 04-0629-17 and Z 04-1005-10 therefore necessitating this addition as subsection (k).

Proposed language in subsection 180 (c) was incorrectly inserted after (a) and has been added instead as subsection (j).

A minor correction to proposed language for subsection 630(b)(31) was made to appropriately reference subsection 630(b)(31)(A).

At the December 3, 2004 Fish and Game Commission meeting, the Commission adopted the proposed regulatory changes.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

1. Paul Weakland, December 3, 2004 Commission meeting

- (a) Questions why the Department proposes to exempt certain fisheries from the tidal invertebrate permit when it is required for everyone else.
- (b) States there is no evidence that MPAs work.
- (c) States that the renaming of the Point Loma and Newport Beach areas after individuals goes against policy.
- (d) States that Dr. Tegner's work has been refuted by other scientists.

Department Response

- (a) The proposed regulations do not change any existing permit requirements or exemptions. The proposed change to the tidal invertebrate section and other sections for specific commercial permits clarify that those permittees who are exempt from being required to obtain a tidal invertebrate permit must still abide by the tidal invertebrate regulations. The proposed changes also update the classifications used in the tidal invertebrate section to make it consistent with the new nomenclature.
- (b) The comment is beyond the scope of the proposed regulations. The proposed regulations do not create new marine protected areas.
- (c) There is no current policy in place regarding naming marine protected areas after individuals. The proposed Newport Beach name change is supported by a 1999 Senate resolution. The proposed Point Loma name change recognizes a scientist who contributed substantially to the knowledge of the Point Loma kelp bed ecosystem.
- (d) The Department is unaware of any scientists who have refuted Dr. Tegner's work.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations and classifications for MPAs in place. This would fail to meet the requirements of the MMAIA to reclassify existing areas and implement simplified naming. Existing difficulties with locating MPA regulations within Title 14 and identifying MPA boundaries would not be corrected.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action does not change any existing regulations or restrictions within MPAs. By clarifying the regulations, classifications, and boundary descriptions, the proposed action may enhance compliance and public understanding of these areas.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.
- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.
- (f) Programs mandated on Local Agencies or School Districts:

None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.
- (h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

Existing regulations establish marine protected areas (MPAs) under a variety of designations and in a variety of locations in Title 14 of the California Code of Regulations. Other existing regulations refer to these same existing MPAs and/or MPA designations. As required by the Marine Managed Areas Improvement Act (MMAIA, Stats. 2000, ch. 385) the proposed regulation will reclassify existing MPAs designated in sections 27.20 through 27.51, 630, and 630.5 of Title 14 of the California Code of Regulations (Title 14) and sections 10801, 10900 through 10913, and 10932 of the Fish and Game Code (FGC) along with State Park Units with marine or estuarine subtidal components listed in Chapter 10 of Division 3 of Title 14.

The proposed action will move MPAs designated in Title 14 from their current sections, add them to Section 632, and repeal the existing sections (except those MPAs currently in Section 632) to facilitate understanding and eliminate unnecessary duplication. The proposed action will incorporate those MPAs designated in the FGC to Section 632 of Title 14. The proposed action will clarify the boundary descriptions and existing regulations for each MPA, **without** altering the existing regulations or boundaries. The proposed action will change the names of certain areas in addition to their classification to either clarify their physical location or simplify the name. The proposed regulation will additionally rename the existing Point Loma Reserve (Title 14, Section 27.50) as the “Mia J. Tegner State Marine Conservation Area” and the existing Newport Beach Marine Life Refuge as the “Robert E. Badham State Marine Park”.

The proposed regulation will add the general regulations for State Marine Parks to Section 632. The proposed regulation will modify references to MPAs found in sections 29.05, 29.40, 30.00, 120.7, 123, 165, 180, and 747 of Title 14 to comply with the new naming system. Editorial changes are also proposed to improve the clarity and consistency of the regulations and typographical errors found in these sections will be corrected. This includes clarifying that transit through existing MPAs with catch onboard and gear stowed is allowed.

Existing regulations found in Section 123 of Title 14 allow for commercial lobster, sea cucumber, crab, and sea urchin, permit holders to operate in the area between the high tide mark and 1,000 feet beyond the low tide mark without possessing a Tidal Invertebrate Permit. The Tidal Invertebrate Permit requirements include prohibitions of take in certain existing classifications of MPAs. The exemption from the Tidal Invertebrate Permit requirement does not exempt the above fisheries from the other take prohibitions found in Section 123. The proposed regulations will add a statement to sections 122 (lobster permits) and 180 (trap permits) indicating this and noting the other provisions of Section 123 still apply.

Existing policy permits commercial market squid permit holders to operate without a Tidal invertebrate Permit as well, though this exemption is not currently listed in Section 123. The proposed regulations will add this exemption to Section 123 and add a statement to Section 149 noting the exemption. Editorial changes are also proposed to improve the clarity and consistency of the regulations in Section 123. All of the above changes are summarized in Table 2 below.

Table 2. Summary of proposed changes.

Section	Summary of Changes
27.20	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.25	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.30	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.35	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.40	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.42	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.45	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.50	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632. Rename as the "Mia J. Tegner State Marine Conservation Area".
27.51	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
29.05	Amend MPA name references and designations, add clarifications, and fix typographical errors.
29.40	Amend MPA name references and designations, add clarifications, and fix typographical errors.
30.00	Amend MPA name references and designations and add clarifications
120.7	Amend MPA name references and designations, add clarifications, and fix typographical errors.
122	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
123	Amend MPA name references and designations, add clarifications, and fix typographical errors.
149	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
165	Amend MPA name references and designations and add clarifications.
180	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
630	Remove existing fully marine areas and move to Section 632, leave areas with a land component but add their marine component to Section 632. Clarify language and add boundary descriptions in Section 632.
630.5	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.

Section	Summary of Changes
632	Add all existing MPAs to this section using new classification system, add clarifying language for their regulations and boundary descriptions, and fix typographical errors.
747	Add new designations to list for guidelines for civil penalties for consistency with new naming system.

Several non-substantive changes have been made to the regulatory language provided in the Initial Statement of Reasons. These changes were made to provide clarity and consistency among the regulations and with the existing regulatory language and are provided in the following table:

Section	Summary of Proposed Modifications
632(b)	A reference to the geographic datum used to determine latitude and longitude coordinates was added to this subsection.
632(b)(9) and (43)(A)	Additional information was added to the proposed language regarding Gerstle Cove State Marine Conservation Area and Harris Point (San Miguel Island) State Marine Reserve to clarify the seaward boundary lines.
632(b)(13)	Additional information was added to the proposed language regarding Tomales Bay State Marine Park to clarify that the area lies within an ecological reserve.
632(b)(13)(C) and (25)(D)	Language clarifying that take of waterfowl is not prohibited was added to the proposed regulations for Tomales Bay State Marine Park and Bair Island State Marine Park.
632(b)(43), (44), (45), (47), (48), (49), (50), and (51)	Location coordinates were re-organized in subsections regarding Harris Point (San Miguel Island) State Marine Reserve, Judith Rock (San Miguel Island) State Marine Reserve, Carrington Point (Santa Rosa Island) State Marine Reserve, South Point (Santa Rosa Island) State Marine Reserve, Painted Cave (Santa Cruz Island) State Marine Conservation Area, Gull Island (Santa Cruz Island) State Marine Reserve, Scorpion (Santa Cruz Island) State Marine Reserve, and Anacapa Island State Marine Conservation Area to standardize the presentation of the information. The changes will standardize the presentation of coordinate information so descriptions begin with the up-coast shoreline corner followed by the offshore corners, in order from up-coast to down-coast, and end with the down-coast shoreline corner.
632(b)(57)(E) and (73)(C)	Language was added to the proposed regulations for Bolsa Chica State Marine Park, Orange County, and Buena Vista Lagoon State Marine Park, San Diego County, to specify that the respective counties may carry out specified management activities after consultation with the Department.
632(b)(73)(A)	Language was added to the proposed regulations for Buena Vista Lagoon State Marine Park to designate where and when recreational take may occur.
632(b)(77)	A typographical error in the list of latitude and longitude coordinates was corrected.

Minor editorial changes were made to clarify the regulatory language. Because Office of Administrative Law's ID # Z 03-1007-10, Z 03-1104-07, Z 04-0423-03, Z 04-0629-17 and Z 04-1005-10 also amends Section 149 (Commercial Taking of Market Squid), the regulatory text regarding Tidal Invertebrate Permits which was proposed in this rulemaking to be added to subsection (b) is instead added as subsection (k). Therefore, the previously noticed re-lettering of subsections (b) through (e) as (c) through (f) is no longer necessary. Section 149 subsections (b) through (J) are being amended and/or added by ID # Z 03-1007-10, Z 03-1104-07, Z 04-0423-03, Z 04-0629-17 and Z 04-1005-10 therefore necessitating this addition as subsection (k).

Proposed language in subsection 180(c) was incorrectly inserted after subsection 180(a) and has been added instead as subsection (j).

A minor correction to proposed language for subsection 630(b)(31) was made to appropriately reference subsection 630(b)(31)(A).

At the December 3, 2004 Fish and Game Commission meeting, the Commission adopted the proposed regulatory changes.